

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on January 14, 2003 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 62, 1/10/2003; SB 70,
1/10/2003; SB 77, 1/10/2003
Executive Action: none

HEARING ON SB 62

Sponsor: SEN. DON RYAN, SD 22, GREAT FALLS

Proponents: Mike McGrath, MT Attorney General
John Morrison, State Auditor
Betty Babcock, AARP Montana
Helen Kellicut, Consumer Protection Office
John Munding, self
David Scrumm, self
Rick Hays, Qwest
Pat Hennessey, self
Mike Strand, CEO, MT Independent Telecommunication
Systems
Cort Jensen, Consumer Protection Office
Matthew Leow, MontPIRG
Ross Cannon, Direct Marketing Association
Riley Johnson, NFIB
Michele Williams, self
Chris McGonigle, self
Jim Kembel, MACOP, MPPA

Opponents: None

Opening Statement by Sponsor:

SEN. DON RYAN, SD 22, GREAT FALLS, opened by saying that SB 62 was his second telemarketing bill for the State of Montana, and it would be administered by the Attorney General's office, which would make a no-call list available to the consumer that would prohibit telemarketers from making unsolicited calls. The bill was fashioned after a Colorado model, and he stressed that it would neither cost the state of Montana nor the consumer anything.

Proponents' Testimony:

Mike McGrath, Montana Attorney General, gave an in depth overview of the provisions in the bill and repeated that this service would be free of charge to the consumer and the taxpayer. He explained that the consumer could place his phone number on a no-call registry through a web-based service, and telemarketing firms seeking to do business in the state of Montana would be required to purchase these lists. The lists were to be updated quarterly, and the respective businesses would have to remain current. Initially, the service would be web-based only, with Montana Interactive providing the service to the Department of Justice at no cost. The funds collected would be put into a

special revenue account, and he envisioned that at some point when there was enough money in that account, it would be used to set up an 800-number which people could call to be added to the no-call registry. He stressed that in Section 4, the bill mandates that a telemarketer must identify himself, and that he cannot use a blocking device to block his identification from a consumer's Caller ID service. Any violation constitutes a civil penalty which would be enforced by the Montana Department of Justice, with penalties up to \$5,000; any penalties collected would also go into the special revenue account. Section 6 proposes that an advisory group be established so that the DOJ can work with various consumer interest groups as well as the telemarketers to ensure that the service is being carried out appropriately and necessary revisions can be made. He touched on a couple of suggested amendments, **EXHIBIT (ens07a01)**, which were in **Sen. Ryan's** possession, one dealing with the phone companies, a second one was being brought by a number of non-profit agencies who had requested to be excluded from the no-call list which he found acceptable. A third amendment dealt with the issue of how to coordinate a Montana list should the FCC or the FTC decide to establish a national no-call registry. He closed his testimony by saying that he would be available to answer further questions.

John Morrison, State Auditor, emphasized that this bill would not only ensure consumer protection from unsolicited sales calls in their homes but was also about law enforcement. He stated that his office dealt with numerous protection and law enforcement issues with regards to insurance and securities, and many of those involved telemarketing scams. From a law enforcement standpoint, it was very important to give people the opportunity to be placed on such a no-call list because then it would be clear that a caller who ignored the request, and did not qualify under any of the bill's exemptions, was not in compliance with the law. He shared an example of a recent telemarketing fraud case where people invested hundreds of thousands of dollars. Luckily, the State Auditor's office was able to recover those investments and moreover, was able to prohibit this company from selling any more unregistered securities. He was quick to point out that this outcome was the exception in those cases and stated that during the first half of last year, the average telemarketing loss to an individual was \$822. According to the the National Fraud Information Center, Americans lose an estimated \$40 billion each year to telemarketing fraud, and it is a disturbing fact that 56% of telemarketing fraud is directed at seniors because they are especially vulnerable. For the aforementioned reasons, he urged the committee to pass this bill.

Betty Babcock, AARP Montana, handed in written testimony
EXHIBIT (ens07a02) .

Helen Kellicut, Consumer Protection Office, asked the committee to consider that it was possible for a citizen to post a "No Soliciting" sign, to block junk mail to their e-mail address through their internet service provider, and to toss regular junk mail unopened, yet in order to be left alone by telemarketers, each company had to be dealt with on an individual basis. She found fault with current law requiring telemarketers to maintain an up-to-date do-not-call list because it was inadequate since many of those companies simply ignored the law. To illustrate that point, she related a personal experience where a non-profit organization maintained that she was not on any such list. She lauded SB 62 because it provided enforcement through the Attorney General's Office and fines of up to \$5,000 for violations. Finally, she affirmed that a stricter law was needed because in recent months, telemarketers have developed calls through recorded messages which do not allow the recipient of the call to request to be put on a no-call list. In her opinion, the multiple number computer dial-up, another novel practice, presents a safety issue because only the first person to answer is solicited and the rest are disconnected, leaving one to wonder whether the hang-up was a possible burglar checking if someone was home. She urged passage of SB 62 so that privacy in our homes would be restored.

John Mundinger, self, rose in support for SB 62 because he did not appreciate the rude intrusion of telephone solicitation. In his experience, the worst offenders have been credit card companies, and long-distance and internet service providers. He stated that he had made repeated efforts to be taken off call-lists, registered his phone number with the Direct Marketing Association, and filed complaints with the FTC and the Montana Department of Commerce resulting in a reduced number of unsolicited calls but not ending them. He was adamant in saying that these companies were wasting their time and resources and are risking their reputation in insisting on making these calls. He figured that telemarketers would object to this bill and maintain that they could regulate themselves. He did not doubt their ability to do so but doubted their commitment. One incident in particular had him upset, namely when he asked to speak to a supervisor after having received numerous unwanted calls from MCI, he was told by that supervisor it would take at least two weeks to comply with his request, and that calls might continue during the interim. He did not understand why it would take that long to flag his phone number, citing that the company used computers to manage calling lists and accounts, dial telephone numbers, and bill their accounts proficiently. In

closing, he asked the committee to authorize the establishment and enforcement of a telephone solicitation do- not-call list for Montana.

David Scrumm, self, also rose in support of SB 62, citing some of the same reason as previous proponents. In particular, he had received numerous credit card offers from one company whose card he already carried. When he asked to be put on their do-not-call list, he was told the calls would stop within 30 days but they did not. His last resort was a letter to the CEO of the company in which he advised him of a possible lawsuit under the Telephone Consumer Act unless the calls stopped immediately. He pointed to the fact that it had unfairly taken much of his time, between making calls and writing letters, trying to solve a problem they had created. He urged the committee to pass this bill to restore the citizen's right to privacy.

Rick Hays, Qwest, stated that he was very familiar with the Colorado bill which was the model for SB 62 and felt it would work well in Montana, helping consumers from receiving unsolicited telemarketing calls while striking a balance that allowed businesses with previous customer relationships to continue to communicate with those customers.

{Tape: 1; Side: B}

Since its inception in July (in Colorado), more than a third of telephone subscribers have signed on to this service which is testimony to its popularity and necessity. The new law has resulted in five violations in six months and fines of more than \$22,000. With regard to the proposed amendments offered by the Attorney General Mike McGrath, he stated they had no objection to the two amendments the Attorney General favored but that Qwest preferred the first amendment which was the one the Attorney general did not care for. In reference to a question **SEN. MIKE TAYLOR** had asked during the hearing on SB 2 regarding the cost for call screening services, he stated that Qwest charged \$2.95 a month to customers with Caller ID.

Pat Hennessey, self, handed her written testimony, **EXHIBIT (ens07a03)**, to the secretary.

Mike Strand, CEO, Montana Independent Telecommunications Systems, stated that his organization represented world telephone companies and cooperatives operating across Montana, and they do not use telemarketing to market their services. Their customers, however, are made up of telemarketers as well as those receiving telemarketing calls. He injected that their interests were not being served when large segments of the customer base dreaded the ringing of their telephone for fear that it was another intrusive, and sometimes aggressive or abusive, telemarketer. He

would prefer that telephone communications be a pleasant experience for his company's customers. It was not appropriate for him to decide which calls the customers want to receive and which they do not; that communication had to remain with the called party and the calling party, and SB 62 established that kind of communication with the no-call registry. He affirmed that the companies he represents fully support this and would cooperate in disseminating information about the do-not-call list. He closed by saying that the committee had to decide which kinds of calls to exempt from the list; he understood that 501(c)3 organizations were exempt but did not know how closely applications for 501(c)3 status were checked.

Cort Jensen, Consumer Protection Office, told the committee that while he strongly supported SB 62, he asked that the committee look closely at the non-profit organizations who wanted to claim an exemption because the majority of complaints his office received for fraud and do-not-call abuses came from groups who had non-profit status. Secondly, he liked the amendment dealing with the federal list, saying that this issue needed to be addressed to avoid problems. Lastly, he admitted that the current law was difficult to enforce, and really did not do what his agency had hoped it would.

Note: After his testimony, he handed **EXHIBIT(ens07a04)** and **EXHIBIT(ens07a05)** to the secretary; these were testimonials meant for this committee but erroneously sent to his office.

Matthew Leow, MontPIRG, voiced his organization's support for SB 62. He agreed with the sponsor in that this was a better bill than SB 2 because the financial burden was not held by the consumer but by the companies wishing to do business in Montana.

Ross Cannon, Direct Marketing Association, explained that this association represents roughly 3,600 companies nationally who do business by e-mail, telephone and direct mail. He maintained that his organization took no official position on this issue but that it did have a role in the state and federal regulation of telemarketing. He cited an article in that day's paper which said that federal regulation through the FTC was pending which would establish a national do-not-call list. He added that the DMA has always made its registry available to states who wanted to use or incorporate it into their lists.

Riley Johnson, NFIB, stated that the NFIB supports the concept of the bill. However, he was concerned with the proposed amendment dealing with FTC coordination because in his opinion, it would not be enough to solve the potential problem with not coming on board and having two call lists. Secondly, on page 3, line 7, (e) where it states "the cost to assess...", he hoped that the

intent was to merely cover the costs of providing this service, and that it would not become a deterrent to legitimate businesses who were willing to pay such cost. Lastly, he asked the committee to hold this bill until **Sen. Mike Taylor's** bill could be heard because he wanted to have the best possible bill come out of this committee.

Michelle Williams, self, requested the committee's support for SB 62, citing many of the same reason of those who testified before her.

Chris McGonigle, self, pleaded for a "do pass" on behalf of herself as well as the elderly who were especially vulnerable to fraudulent solicitations. She told of her elderly parents who had received 13 out-of-area calls in one single day.

Jim Kemble, MACOP, MPPA, also rose in support for SB 62.

Questions from Committee Members and Responses:

SEN. BOB STORY, SD 12, PARK CITY, asked **Attorney General Mike McGrath** to clarify subsection (3) on page 4 of the bill.

Attorney General McGrath explained that it provided for the consumer's right of action as well if he was not satisfied with the action taken by his office. **Sen. Story** inquired as to how a consumer would go about that, and where this action would be brought. **Attorney General McGrath** responded that the consumer would file a lawsuit under the bill's provisions, and it would be heard in District Court. **Sen. Story** then probed further, pointing to the advisory group mentioned in Section (6) whose function was to compile and promote a list of literature.

Attorney General McGrath affirmed this and explained that this was one more educational opportunity for the consumer, clarifying how to get on this no-call list; he envisioned it to be modeled after the Gaming Advisory Council and would give his office the opportunity to interact with individuals and businesses who were engaged in telemarketing, or phone companies who were involved with telemarketers. The group then served as a vehicle for the Attorney General's Office to work out problems should they arise. **Sen. Story** asked what the revenue in the special account would be used for. **Attorney General McGrath** replied that it would be used to pay for the program, such as initiating an 800-number and hiring staff to administer it. He added that any such expenditures would be subject to appropriation by the Legislature each session.

SEN. KEN TOOLE, SD 27, HELENA, referred to **Mr. Brad Griffin's** testimony two days earlier and admitted that he was taken by surprise at his testimony with regards to store credit card

holders who could be contacted by subsidiaries of said retailer for telemarketing purposes. He wondered if SB 62 had a clause to prevent this kind of transaction. **Mr. Griffin** replied that there was nothing written in this bill which would prevent that. He felt that this kind of sharing of consumer information would be allowed.

SEN. MIKE TAYLOR, SD 37, PROCTOR, referred to Sections 6 and 7 on page 5 and asked the **Attorney General** what the cost involved might be. **Attorney General McGrath** informed him of a Fiscal Note, just published that afternoon, which seemed feasible to him. **Sen. Taylor** suspected that in the first couple of years, and compared with Colorado which took in more than \$20,000 in the first six months, the Montana program would be short of cash. He wondered how this deficit would be made up. **Attorney General McGrath** did not anticipate that many businesses would violate this law since most of the telemarketers were familiar with the concept, and he did not anticipate many enforcement problems, either. He reiterated that this service would be paid for by selling the lists to telemarketing companies. **Sen. Taylor** brought up a bill from the previous session dealing with electronic calls which was ultimately signed by the Governor. He stated that there had been many violations that went unpunished because there was a problem with enforcement, and he wondered if the fines spelled out in SB 62 would help remedy that situation. The **Attorney General McGrath** referred that question to **Cort Jensen** who replied that the pre-recorded message law was often violated because it was located in the criminal code, not the telemarketing code, and thus it was harder to find the phone numbers of those who did not want to be called. He added that the honest telemarketers immediately ceased calling those numbers when that fact was pointed out to them. He mentioned that the most violations of this law involved political ads and debt consolidation. Since most of the political calls were a last minute push, by the time the complaints came into his office, the election was over and his office lacked jurisdiction to have the election redone. As to the debt consolidation calls, these were made by a company in Florida which set up shop in a different place as soon as complaints against them were investigated.

{Tape: 2; Side: A}

Sen. Taylor then asked whether he would like charitable organizations to be excluded, and **Mr. Jensen** said that he would. He cautioned, however, that there was no regulation in Montana that said how much of the money raised had to go back to the charity. **Sen. Taylor** wondered whether political candidates were excluded because of the free speech issue. **Mr. Jensen** confirmed that, saying that any change in that regard would have to be addressed through campaign reform.

Sen. Taylor asked the same question of **Attorney General McGrath** who responded that the Supreme Court treated political speech differently than other types of speech, and he did not want to be in a situation where Montana's statute could be challenged as being in violation of or inhibiting political speech.

SEN. BEA MCCARTHY, SD 29, ANACONDA, referred to page 4, subsection (3) and asked how to identify and report out-of-area calls as shown on her Caller ID since there was no number associated with it. **Attorney General McGrath** replied that SB 62 required people who engage in telemarketing to identify themselves. They cannot use a device that blocks the Caller ID.

Sen. McCarthy inquired if it was the customer's responsibility to pick up the number of the caller. **Attorney General McGrath** stated that it would be on the Caller ID. **Sen. McCarthy's** next question was what to do if the recipient did not subscribe to Caller ID, and **Attorney General McGrath** cautioned that if the call could not be tracked, it could not be enforced.

SEN. WALT McNUTT, SD 50, SIDNEY, felt that the public was being misled if they were told this bill would solve all of the telemarketing problems, especially in the scenario previously described where a company switched location and even states when investigated. He wondered how the law could be enforced in such a situation. **Attorney General McGrath** confirmed that it would not solve all of the problems, but it will address the vast majority of these calls. He foresaw continued problems with fraud but stated that this bill gave his office the mechanisms to proceed should a situation warrant it. He affirmed that he supported the national no-call registry because that was one of the ways to address the point **Sen. McNutt** had raised. **Sen. McNutt** asked if there was any effort nationally where the states' Attorney Generals collaborated in prosecuting fraudulent solicitations, or whether they worked out agreements with other states to seek prosecution. **Attorney General McGrath** answered that cooperation between surrounding states was a common law enforcement practice.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked for clarification of how the exemptions were defined. **Attorney General McGrath** repeated that this bill was modeled after bills in Colorado and Missouri because they appeared to work the best, and most of the exemptions were based on the recommendations of his counterparts in those two states. **Sen. Stonington** inquired about the criteria used in judging the success of their legislation. **Attorney General McGrath** replied that they had told him that people were signing up for the service and telemarketers were complying, and that they had support in the legislative process to get it passed

in the first place. As to the exemptions, this was spelled out in Section (1), subsection (3) of the bill. In his opinion, if a consumer asked a solicitor making calls on behalf of a non-profit organization to stop calling, they would comply because, after all, they were after a donation and if they upset the consumer, he would be less likely to contribute to that organization. As to (2), he clarified that a natural person meant a person and not a corporation. **Sen. Stonington** wanted to know who was bringing the amendments mentioned before. **Attorney General McGrath** explained that they were coming from several organizations who had talked to him as well as to **Sen. Ryan**, and while he did not support the first one, he felt the second one dealing with the non-profit organizations was fine, and he was bringing the third amendment which dealt with the federal coordination issues.

Sen. Story inquired if there was enough intra-state solicitation going on that it could support a Montana program should the federal registry become available sooner. **Attorney General McGrath** understood that the FTC proposed using Montana's list and coordinating with his office, and would not preempt state legislation. Thus, a telemarketing company doing business in Montana was required to buy the Montana list, and Montana in turn would provide their database to the FTC.

Sen. McCarthy recalled that Qwest at one time provided free caller ID, and asked **Mr. Hays** about the stipulations. **Mr. Hays** replied that this particular promotion was to offer the service and then provide the display unit at no cost. **Sen. McCarthy** wondered whether both the unit and the service could be provided free of charge to some people who could not afford this service. **Mr. Hays** replied that it would be difficult to verify qualifying data but stated he would be willing to take a look at it.

VICE CHAIR COREY STAPLETON, SD 10, BILLINGS, asked for clarification as to why there was a higher priority assigned to a political candidate asking for \$1,000 than to a non-profit agency or party from the private sector, asking for the same amount. **Attorney General McGrath** explained that the US Supreme Court, over the last couple of decades, had carved out a special niche for "political speech" and seemed to have treated "commercial speech" differently. He went on to say that the Court had been particularly careful in prohibiting regulation with regards to political speech, especially in the area of campaign funding and finance where it has struck down congressional enactments as being an infringement of political speech. It seemed to give the latter a higher type of standing than other types of speech. **Vice Chair Stapleton** surmised that regarding the right to free speech, there were in fact different classes. **Attorney General McGrath** confirmed that, saying that he was concerned that parts

of this bill might be nullified because it was in interference with what the Supreme Court considered a higher standard for political speech. **Vice Chair Stapleton** was concerned with the differentiation, saying that 80% of Montanans did not want to be called unless the call was from a friend, family member, or prior business relationship; thus, it should not make any difference who was doing the soliciting, and it was unfair that political candidates or non-profit organizations could solicit but not the private sector trying to sell a product. **Attorney General McGrath** explained that the proposal dealt with the solicitation for a product and not with someone trying to send a message.

SEN. GARY PERRY, SD 16, MANHATTAN, expressed his concern with computer-generated, pre-recorded solicitation messages from telemarketers and asked what could be done with regard to those calls. **Mr. Jensen** agreed that this was a growing concern because they were already being used as an argument against the traditional do-not-call list; they claim the pre-recorded message or the method used to circumvent the phone interaction by placing the calls directly onto a person's answering machine does not constitute a violation since the caller does not talk directly to the consumer. He informed the committee that the FCC was currently considering banning these devices but that it was difficult to catch the violators because some of them used the blocking devices which made it impossible to track them. Moreover, a lot of these companies set up shop in Ireland or India where there was no cooperation at all. **Sen. Perry** asked for what other purposes the registry could be used. **Mr. Jensen** replied that oftentimes, the list was resold to data miners, or people trying to find information about people could sell it on the internet to the highest bidder; he charged that the key was to give the telemarketers merely a list of numbers, and nothing else. **Sen. Perry** asserted that the bill said the information on the list was not public record; he wondered how it could be made public by the purchaser. **Mr. Jensen** said the list had to be protected, and he would prosecute anyone who made it public because he could not betray the trust of the people who gave their information in hopes of being protected from solicitations. **Sen. Perry** directed his question at the **Attorney General** who stated that the bill specifically provides that the list may not be sold or disclosed. He assured the committee that this bill did apply to computer-generated calls as well. **Sen. Perry** asked where the resale provision could be found in the bill, and was told that it was stated in Section(3), subsection(4). **Sen. Perry** wondered if it would not be simpler to just have a list of people who wanted this kind of solicitation since the logistics of the bill were so complicated, and that the public merely embraced the concept of the bill. **Attorney General McGrath** admitted that he

had not considered that possibility but did not think that kind of legislation, if passed, would uphold scrutiny by the courts.

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Closing by Sponsor:

Sen. Ryan closed on SB 62.

HEARING ON SB 70

Sponsor: **SEN. WALT McNUTT, SD 50, SIDNEY**

Proponents: **Matt Brainard, PSC**
 John Alke, MDU
 Jim Morton, Human Resources Development Council
 Patrick Judge, MEIC
 John Fitzpatrick, NorthWestern Energy
 Dan Lewwer, Rocky Mountain Development Council
 Debbie Smith, NRDC/RNP
 Matthew Leow, MontPIRG
 Jim Nolan, DPHHS
 Betty Beverley, Exec. Dir., MT Senior Citizens
 Assn.

Opponents: **none**

Opening Statement by Sponsor:

SEN. WALT McNUTT, SD 50, SIDNEY, opened by saying that SB 70 came out of the Transition Advisory Committee (TAC), and that many hearings were held on the Universal Systems Benefit issue in subcommittee meetings. He stated that it was his recommendation that USB funds be expended in the utility service territory where they were generated. He added that past practices where this was not done were grossly unfair.

Proponents' Testimony:

Matt Brainard, Public Service Commissioner, District 4, rose in support of SB 70 on behalf of the PSC.

John Alke, MDU, said that he also supported SB 70, saying that his company was the primary beneficiary of the bill. He told the committee that during the first year, his company reverted roughly \$380,000 to the state, in the second year, the amount was

about \$140,000, and he estimated the latter amount would be reverted in the coming year. He lauded the fact that the provisions in this bill ensured that this money will be spent by the state in their service territory.

Jim Morton, Human Resource Council, also rose in support of SB 70.

Patrick Judge, MEIC, stated the bill was a fairness measure which ensured that USB funds were expended in the communities and areas where they were generated. He felt that the bill simply codified existing practices. He hoped that all utilities would pursue their own programs but in the event that monies were forfeited to the state, it made sense that these funds were used for the consumers from which they came.

John Fitzpatrick, NorthWestern Energy, fully supported this bill as well.

Dean Lewwer, Director, Rocky Mountain Development Council, stated his support for the bill.

Debbie Smith, NRDC/RNP, proclaimed that it was a terrific idea to codify what was already being done. She stated that the USB was never intended to be a general type of tax where utility customers pay a charge to the state who in turn redistributed these funds to wherever it saw fit.

Matthew Leow, MontPIRG, also testified in favor of SB 70, citing many of the same reasons the committee had heard previously.

Jim Nolan, DPHHS, stated that his agency was the federal grantee of the Low Income Energy Assistance and the Weatherization programs in the State of Montana. He further stated that his agency had been the recipient of funds from both MDU and the City of Troy, and had in both cases returned those funds to the service area from which they had come, either in the form of additional LIEAP benefits or through helping to get homes weatherized.

Betty Beverley, Exec. Dir., Montana Senior Citizens Assn., stated that many seniors were taking advantage of these programs and asked the committee for passage of the bill.

Questions from Committee Members and Responses:

Sen. Toole asked the sponsor what had happened in the past when these funds were not reverted back to the MDU service territory.

Sen. McNutt explained that in the first year, the money may not

always have ended up in the areas in which it was generated despite the state's best efforts. He assured **Sen. Toole** that this bill ensured that the funds were returned to the areas where they were generated. **Sen. Toole** wondered how this would affect co-ops because, as he understood it, the co-ops had been writing off their USB obligation against Bonneville Power's programs run in other states. **Sen. McNutt** replied that the co-ops had been able to write off some conservation measures but they still conducted their own programs in addition to that write-off. He suggested that **Sen. Toole** ask one of the co-ops' representatives about this issue. In response to this question, **Doug Hardy, Montana Electric Co-operatives**, stated that they did, in fact, expend these funds in their own co-op area; of last year's nearly five million dollars, a portion was credited from conservation paid for through wholesale power bills in different co-ops. He stressed the practice varied among the co-ops but all of them were amortized in Montana.

Sen. Story inquired whether co-ops had ever paid into these accounts. **Mr. Hardy** stated that they had not; they were expending the monies in excess of slightly more than 3% locally among the 26 co-ops. **Sen. Story** directed his next question to **Mr. Alke**, asking why MDU could not spend the monies in their own programs and had to put money into one of these accounts. **Mr. Alke** responded that when the deregulation act was passed in 1997, the USBC was calculated and driven solely by how many dollars Montana Power had in these programs, and the Universal System Benefit Charge was established to maintain that funding level. MDU has never had these programs on a system; and when the law mandated to collect and spend this money, MDU did not have any programs for expending these funds. After the PSC authorized their programs, MDU reverted approximately \$380,000 because these were not in effect for the full year. Now, the money that is reverted stands at about \$140,000. He also pointed out that the USBC funding is temporary, and MDU had made the decision not to create internal programs with set administration costs which their customers would still have to bear even if the USBC was no longer in effect. He informed the committee it was advantageous that some of the money went to and was administered by the state because MDU did not have the administration costs to deal with.

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, asked whether any of Montana Power ratepayers' money went into the MDU area before they were on the USBC program. **Jim Nolan** answered that any monies his agency had received from Montana Power/NorthWestern Energy has remained in their service areas.

Closing by Sponsor:

Sen. McNutt closed on SB 70.

HEARING ON SB 77

Sponsor: **SEN. ROYAL JOHNSON, SD 5, BILLINGS**

Proponents: **Matt Brainard, PSC**
 Tom Schneider, PSC
 Jim Morton, Human Resources Development Council
 Tony Boniface, Independent Power Systems
 Debbie Smith, NRDC/RNP
 Betty Whiting, MT Association of Churches
 Patrick Judge, MEIC
 Doug Hardy, MT Electric Cooperatives' Assn.
 Edward Roe, self
 Rachael Haberman, Energy Share
 Ed Eden, AARP Volunteer
 Matthew Leow, MontPIRG
 Jim Nolan, DPHHS
 Betty Beverly, Exec. Dir., MT Senior Citizens Assn.
 Gene Lewwer, Rocky Mountain Development Council
 John Fitzpatrick, NorthWestern Energy
 Mary Hamilton, self

Opponents: **None**

Opening Statement by Sponsor:

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, turned the meeting over to **Vice Chair Stapleton** so he could present his bill before the committee. He explained that this bill ultimately was incorporated into HB 474 during the last Legislature, and since the voters repealed HB 474, he felt something had to be done to extend the USB program beyond its sunset of July 1, 2003. He pointed to line 22 of the bill where it states the USBC rates must remain in effect until December 31, 2005. The full calendar year was requested by those administering these funds as they were better able to plan disbursements if they were not on a fiscal year cycle.

Proponents' Testimony:

Matt Brainard, PSC, rose in support of SB 77 on behalf of the Commission.

Tom Schneider, PSC, affirmed the PSC's favorable position toward SB 77. Testifying on his own behalf, he stressed it was important the USB programs be recognized as long-term. They relate to low income issues, to conservation, and renewables. He went on to say that each of these were key components as there still were 290,000 default supply customers, and these programs were strongly supported by the Transition Advisory Council.

Jim Morton, Human Resources Development Council, lauded the efforts of the TAC committee, indicating he also supported SB 77.

Tony Boniface, self, stated that he was a small business owner in Bozeman, providing renewable energy systems to mobile homes. Due to the advent of both the net metering by Montana Power and the availability of USB funds, he was able to implement a number of renewable systems on MPC's grid, thereby increasing his business and hiring two full-time employees which in turn supported Montana's tax base. He urged the committee to pass this legislation.

Debbie Smith, NRDC/RNP, asked the committee to consider extending the USBC even further, namely from 2005 to 2013 as per her proposed amendment, **EXHIBIT (ens07a06)**. She felt this was consistent with **Commissioner Schneider's** recommendation, and that way, the Legislature would not have to address this issue every session.

Betty Whiting, MT Association of Churches, also rose in support of SB 77, saying these services were important to low-income citizens. She further believed that we had a moral obligation to meet the basic needs of all citizens, and gas and electricity certainly were basic necessities.

{Tape: 3; Side: A}

Patrick Judge, MEIC, stated his organization strongly supported SB 77 as well as the amendment proposed by **Ms. Smith** on behalf of **NRDC/RNP**. He reiterated that both of the previously heard bills had the support of the TAC committee. He went on to say that the types of activities USBC supported were fundamentally important, such as conservation/energy audit programs, renewable energy demonstration projects, and low-income assistance, and moreover, they were paid for by every electricity consumer in the state. Lastly, he offered, for the record, **EXHIBIT (ens07a07)**, reports prepared by NorthWestern Energy with regards to their USB programs over the last three years.

Doug Hardy, Montana Electric Cooperatives' Association, handed written testimony **EXHIBIT (ens07a08)** to the secretary.

Edward Roe, self, provided written testimony, **EXHIBIT (ens07a09)**.

Rachel Haberman, Energy Share of Montana, spoke on behalf of the 3,600 families who have been helped through the low income USB programs. She explained that the Energy Share program compliments the LIEAP program, and that it allows a one-time amount of up to \$500. She cited people who had lost their jobs or time at work and had used up their savings, working families who had to chose between repairing their car or paying an overdue bill, or senior citizens on fixed incomes as the beneficiaries of the program. She went on to say that since 1982, Energy Share has helped some 18,000 families with \$5.2 million. She affirmed that USB has made an indelible mark on Energy Share's ability to help low income families, doubling the number of families assisted since its inception and expressed hope for passage of the bill.

Ed Eden, AARP volunteer, rose in support of SB 77.

Matthew Leow, MontPIRG, voiced his organization's support for SB 77 as well. Summarizing previous testimony, he proclaimed that it was easy to see how many benefits the USB programs has, and why it should be a long-term commitment. He lauded **Ms. Smith's** suggestion to extend the programs to 2013 and said this would signal program stability and invite more investment by the utilities.

Jim Nolan, DPHHS, praised the work carried out by MDU and Northwestern Energy within the USB program, such as the internal expenditures for weatherization and the low-income bill discount. Combined, these represented over two and a half million dollars per year. He stated that the federal appropriation for LIEAP was quite variable, having gone from a high of 13 million to a low of 6 million dollars, and anything the state could do to help low income families meet their power bills would be very much appreciated.

Betty Beverly, Exec. Dir., MT Senior Citizens Assn., stood in support of SB 77 for the aforementioned reasons, and asked for a further extension than the bill provided.

Gene Lewwer, Rocky Mountain Development Council, stated he had served on the TAC committee and Energy Share's Board of Directors, and that his agency not only operated the LIEAP program but also served as an area Agency on Aging; from these perspectives, he urged support for SB 77.

John Fitzpatrick, NorthWestern Energy, rose in support of SB 77 as presented by **Chairman Johnson**. He added that the company would not support the amendment extending the benefits further than December 2005 because NorthWestern, over the course of the next two years, had plans to engage in a considerable amount of work in the area of conservation measures as part of their overall default portfolio supply. He felt that this might have some impact on the future shape of the USB and reserved the right to discuss this issue again in two years.

Questions from Committee Members and Responses:

SEN. BOB STORY, SD 12, PARK CITY, asked whether the 70,000 MW/Hours of energy saved represented an accumulative total or a load reduction. **Mr. Judge** replied that it was an accumulative total from 1999 through 2001. **Sen. Story** wondered what kind of actual load decrease this represented, and **Mr. Judge** replied it about 9.5 megawatts of capacity. **Sen. Story** then asked the cost of these reductions. **Mr. Judge** estimated the average cost per kilowatt hour at 3.5 cents. **Sen. Story** directed his next question at **Mr. Fitzpatrick**, asking whether MPC ran its own internal programs before the 1997 restructuring laws. **Mr. Fitzpatrick** did not know, not having been with the company then. **Sen. Story** asked the same question of **Gary Willis, NorthWestern Energy**, who replied that yes, the company had similar programs dating back before 1997. He explained that the funding amount was based on 2.4% of 1995 levels of revenue which happened to be the same today still. **Sen. Story** then asked how these programs were funded back then. **Mr. Willis** answered that they were funded the same way they are today. **Sen. Story** wondered if the programs had always been rate-based, and **Mr. Willis** said he would have to double-check that.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked what NorthWestern Energy was considering for the next two years that would change their attitude towards the USB program. **Mr. Fitzpatrick** denied that the company would change their attitude towards these programs; he assured her that they did deem them valuable and important. He opposed a ten-year extension because of what might happen in terms of conservation which could make the company want to restructure some things. He mentioned as one of the issues the imbalance in the company between gas and electric as far as available funds. **Sen. Stonington** asked how this would impact USB, and **Mr. Fitzpatrick** was not sure of that as yet; that was why NorthWestern preferred to hold off for now, so they could make a proper assessment, and then this issue could be discussed again.

Closing by Sponsor:

Chairman Johnson thanked everyone for coming forward and testifying on behalf of the bill. He assured the committee that this bill was for the benefit of the people in this state who needed this kind of help; it was not meant to be an economic development bill. He felt that money would continue to be available for these programs, and he wanted to make sure they continued to be available.

Note: Written testimony from **Mary Hamilton, self**, was turned in to the secretary after the meeting, **EXHIBIT**(ens07a10)

ADJOURNMENT

Adjournment: 5:20 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens07aad)